

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

2004-10-10 3:28

UNITED STATES OF AMERICA,

04-12587 JLT

Plaintiff,) CASE NO.

vs.)

) TRACT NO. A-189-E

**16.086 ACRES OF LAND, MORE OR
LESS, SITUATE IN BARNSTABLE
COUNTY, COMMONWEALTH OF
MASSACHUSETTS, AND EDWIN
ALFRED THOMPSON, ET AL.**

Defendants.)

)

**MEMORANDUM IN SUPPORT OF MOTION
FOR ORDER FOR DELIVERY OF POSSESSION**

The United States of America is entitled to possession as an incident of the right to exercise the power of eminent domain. Hanson Lumber Company v. United States, 261 U.S. 581, 587 (1923). A Declaration of Taking has been filed and funds have been deposited in the registry of the court as estimated just compensation for the property herein.

Under the Declaration of Taking Act, 40 U.S.C. §3114, upon deposit by the condemnor of estimated just compensation, title to the land is vested in the United States. The Act is intended to give the government immediate possession of the property and give the owner immediate compensation, in the form of estimated value, in return for the title to his land. United States v. Miller, 317 U.S. 369, 381 (1943); United States v.

2,606.84 Acres of land, 32 F.2d 1286 (5th Cir. 1970), cert. denied, 402 U.S. 916 (1971).

The Declaration of Taking Act also specifically provides that upon the filing of the Declaration of Taking, the court shall have the power to fix the time within which and the terms upon which the parties shall be required to surrender possession to the petitioner." The basic purpose of the Act is to give the government possession and title and to avoid unnecessary delay in the consummation of public projects. McKendry v. United States, 219 F.2d 357, 358 (9th Cir. 1953); In Re United States, 257 F.2d 844 (5th Cir. 1958), cert. denied, 358 U.S. 908 (1958). This is an orderly procedure for transferring control of the property to the condemnor.

Respectfully submitted,

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